



*2018 update*

---

# Canadian Proxy Contest Study

FASKEN

## **About Fasken**

Fasken is a leading international law firm with more than 700 lawyers and ten offices on four continents. Clients rely on us for practical, innovative and cost-effective legal services. We solve the most complex business challenges, providing exceptional value and putting clients at the centre of all we do.

# 2017

## Year in review

---

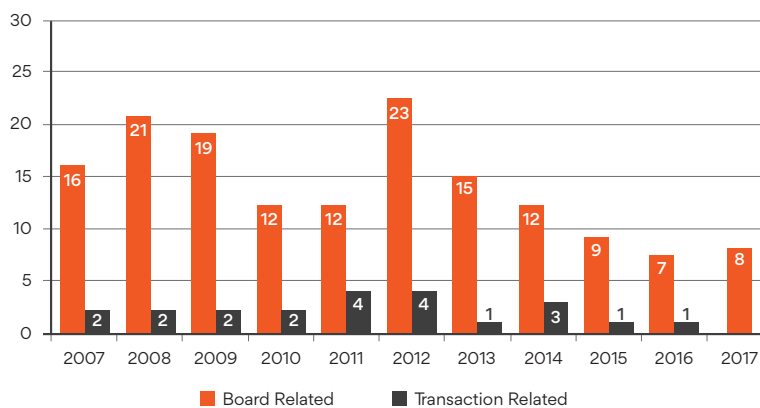
For the first time in three years, dissidents won more formal proxy contests than management. The type of dissident also changed in 2017, with fewer contests initiated by current or former management and more contests initiated by outside activists. The number of formal contests remained consistent with the previous two years, but well off the high of 27 contests in 2012.

### 1. The number of contests held steady

The eight formal proxy contests in 2017 equalled the number in 2016, which may suggest a levelling off of activity. In fact, since the peak of 2012, the number of formal contests has declined by more than 40 per cent over the five-year period ended 2017 compared to the five-year period ended 2012.

#### Proxy Contests per Year

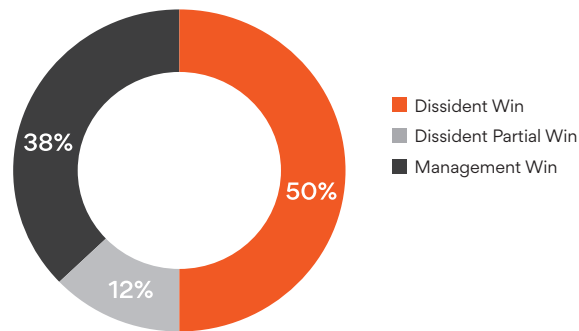
2007 - 2017  
(176 Contests)



## 2. Dissidents ended management's winning streak

Dissidents captured complete victory in half the formal contests and added one partial victory. As a result, dissidents edged management in the win column and ended management's three-year winning streak.

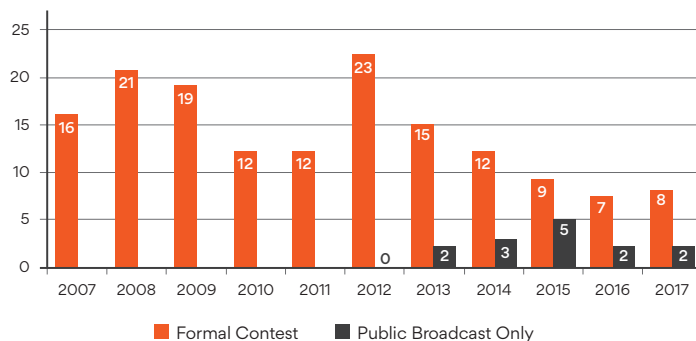
▼ Win Rate in Board-Related Contests  
(8 Contests)



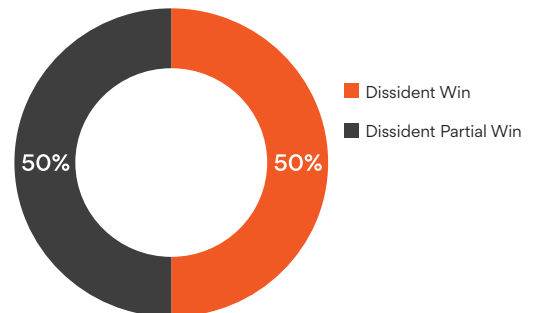
## 3. Solicitations by public broadcast remained relatively infrequent

Broadcast-only solicitations remained relatively rare with the two contests that occurred in 2017 equalling the number in 2016. That said, dissidents achieved full or partial success in each of these four contests.

▼ Board-Related Proxy Contests Per Year  
(Formal and Broadcast-Only)  
2007 - 2017  
(168 Contests)

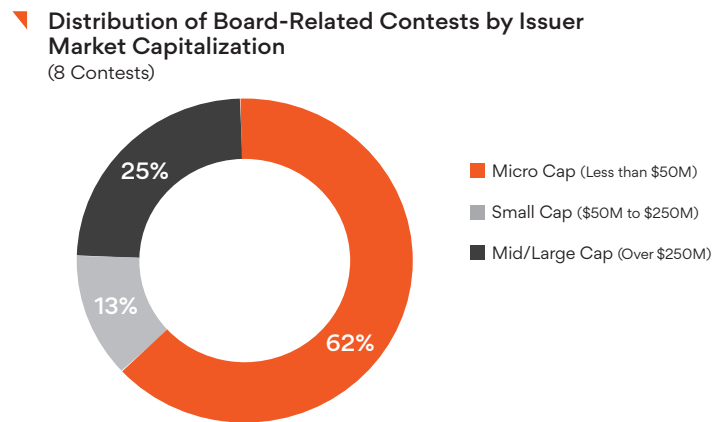


▼ Win Rate in Broadcast-Only Board Related Contests  
(2 Contests)



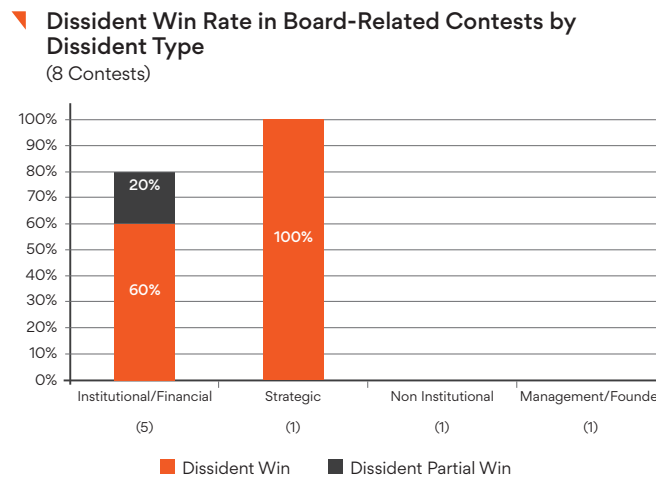
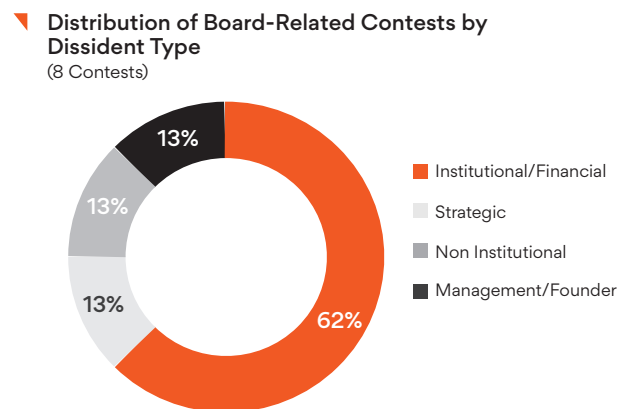
## 4. Micro-cap companies remained the focus of the action

Once again, the action remained focussed largely on micro-cap companies; however, a quarter of the contests involved large cap companies, which represented an increase over 2016.



## 5. Institutional activists came off the sidelines... and were rewarded for doing so

While founder/management dissidents dominated the landscape in 2016 (and largely failed), 2017 marked the comeback of institutional/financial dissidents, with such dissidents achieving full or partial success in all but one of the five contests they launched.



## Authors



**Aaron J. Atkinson**  
Partner  
+1 416 865 5492  
aatkinson@fasken.com

Aaron's practice is focused on mergers and acquisitions, corporate governance and corporate finance. His practice includes advising boards and board committees, including in contested take-over transactions, proxy contests, internal investigations and day-to-day governance issues. Aaron also organized and taught a course in corporate finance and M&A at the University of Windsor Faculty of Law for eight years. Aaron's expertise is recognized by a number of publications, including *Chambers Global: The Guide to the World's Leading Lawyers for Business* as a leading lawyer for Corporate/M&A and the *Canadian Legal Lexpert Directory* for Corporate Finance and Securities. In 2013 Aaron was a recipient of Lexpert's "Rising Stars: Leading Lawyers Under 40 Award".



**Bradley A. Freelan**  
Partner  
+1 416 865 4423  
bfreelan@fasken.com

Brad's practice is focused on mergers and acquisitions, shareholder activism and corporate finance. Brad has been involved in a number of contested situations, including hostile take-over bids, topping bids and proxy contests, and also has significant experience representing acquirors and targets in connection with negotiated transactions. Brad also regularly acts for issuers and investment dealers in connection with public and private financings, including cross-border offerings. Brad is recognized by *IFLR1000 2017* as a "Rising Star" in the areas of M&A and Mining, and the *Canadian Legal Lexpert Directory* for Corporate Finance and Securities. Brad received his JD/MBA from the University of Toronto and has also completed Level III of the Chartered Financial Analyst Program.



**David Steinhauer**  
Associate  
+1 416 868 3487  
dsteinhauer@fasken.com

David Steinhauer is engaged in a broad corporate/commercial practice. David regularly assists clients in a variety of transactions including mergers and acquisitions and debt and equity financings.

We wish to acknowledge the efforts of Andrea Kruyne, Mariko Rivers, Dana Gregoire, Russell Lindzon and Zach Austin who devoted their time to make this update possible.

## See Our Other Studies

The Canadian Proxy Contest Study: 2018 Update is the sixth installment of our series of studies on Canadian proxy contests, which can be found at the following links:

[www.fasken.com/en/knowledgehub/2017/01/canadianproxyconteststudy2017-20170125](http://www.fasken.com/en/knowledgehub/2017/01/canadianproxyconteststudy2017-20170125)

[www.fasken.com/en/knowledgehub/2016/03/canadianproxyconteststudy2016-20160303](http://www.fasken.com/en/knowledgehub/2016/03/canadianproxyconteststudy2016-20160303)

[www.fasken.com/en/knowledgehub/2015/05/canadianproxyconteststudy2015-20150512](http://www.fasken.com/en/knowledgehub/2015/05/canadianproxyconteststudy2015-20150512)

[www.fasken.com/en/knowledgehub/2014/03/canadianproxyconteststudy2014-20140306](http://www.fasken.com/en/knowledgehub/2014/03/canadianproxyconteststudy2014-20140306)

[www.fasken.com/en/knowledgehub/2013/01/anextensiveempiricalstudyof-20130125](http://www.fasken.com/en/knowledgehub/2013/01/anextensiveempiricalstudyof-20130125)

Please also see our 2015 Canadian Hostile Take-Over Bid Study which reviews all 143 unsolicited (or “hostile”) formal bids for control of a Canadian-listed public company in the ten-year period between 2005 and 2014, which can be found at the following link: [www.fasken.com/en/knowledgehub/2015/02/anextensiveempiricalstudyof-20150219](http://www.fasken.com/en/knowledgehub/2015/02/anextensiveempiricalstudyof-20150219) and “”, and our analysis of hostile bid activity since the 2016 changes to the bid regime which can be found at the following link: <http://bit.ly/HostileBidsOnIce>

## Appendix

### 2017 Formal Board-Related Contests

Target Name	Target Industry	Target Market Cap	Outcome of Contest
SGX Resources Inc.	Mining	Micro Cap	Dissident Win
Eco Oro Minerals Corp.	Mining	Small Cap	Partial Win
Rapier Gold Inc.	Mining	Micro Cap	Dissident Win
Eagle Energy Inc.	Energy	Micro Cap	Management Win
Liquor Stores N.A. Ltd.	Diversified	Mid/Large Cap	Dissident Win
Granite Real Estate Investment Trust and Granite REIT Inc.	Diversified	Mid/Large Cap	Dissident Win
Nerium Biotechnology, Inc.	Life Sciences	Micro Cap	Management Win
Synex International Inc.	Energy	Micro Cap	Management Win

### 2017 Broadcast-Only Board-Related Contests

Target Name	Target Industry	Target Market Cap	Outcome of Contest
Blue Moon Zinc Corp. (formerly Savant Explorations Ltd.)	Mining	Micro Cap	Dissident Win
Espial Group Inc.	Diversified	Small Cap	Partial Win



# Ten offices Four continents One Fasken

> [fasken.com](http://fasken.com)



## ▼ Canada

### Vancouver, BC

550 Burrard Street, Suite 2900  
T +1 604 631 3131  
[vancouver@fasken.com](mailto:vancouver@fasken.com)

### Calgary, AB

350 7th Avenue SW, Suite 3400  
T +1 403 261 5350  
[calgary@fasken.com](mailto:calgary@fasken.com)

### Ottawa, ON

55 Metcalfe Street, Suite 1300  
T +1 613 236 3882  
[ottawa@fasken.com](mailto:ottawa@fasken.com)

### Québec, QC

140 Grande Allée E., Suite 800  
T +1 418 640 2000  
[quebec@fasken.com](mailto:quebec@fasken.com)

### Surrey, BC

13401 - 108th Avenue, Suite 1800  
T +1 604 631 3131  
[surrey@fasken.com](mailto:surrey@fasken.com)

### Toronto, ON

333 Bay Street, Suite 2400  
T +1 416 366 8381  
[toronto@fasken.com](mailto:toronto@fasken.com)

### Montréal, QC

800 Victoria Square, Suite 3700  
T +1 514 397 7400  
[montreal@fasken.com](mailto:montreal@fasken.com)

## ▼ Global

### London, United Kingdom

15th Floor, 125 Old Broad Street  
T +44 20 7917 8500  
[london@fasken.com](mailto:london@fasken.com)

### Johannesburg, South Africa

Inanda Greens, Building 2  
54 Wierda Road, West  
T +27 11 586 6000  
[johannesburg@fasken.com](mailto:johannesburg@fasken.com)

### Beijing, China

Level 24, China World Office 2  
No.1 Jianguomenwai Avenue  
T +8610 5929 7620  
[beijing@fasken.com](mailto:beijing@fasken.com)

# FASKEN